

ORIGINAL

INDIANA UTILITY REGULATORY COMMISSION

Final Rulemaking

IURC RM #07-07

LSA #07-514(F)

Amending 170 IAC 1-1.1-3, 170 IAC 1-1.1-4, 170 IAC 1-1.1-7 through 170 IAC 1-1.1-10,
170 IAC 1-1.1-12, 170 IAC 1-1.1-15, 170 IAC 1-1.1-16, 170 IAC 1-1.1-18,
170 IAC 1-1.1-21, 170 IAC 1-1.1-23, and 170 IAC 1-1.1-35,
Concerning Practice and Procedure Before The Commission.

Upon prior publication of notice and a public hearing held on November 1, 2007, at 9:30 a.m., E.D.T. (local time) in Judicial Courtroom 224 of the National City Center, 101 W. Washington Street, Indianapolis, Indiana, as required by the provisions of I.C. 4-22-2-1, *et seq.*, the Indiana Utility Regulatory Commission, on April 23, 2008, at 2:00 p.m. E.D.T. in Judicial Courtroom 222, National City Center, Indianapolis, Indiana at which time a majority of members of said Commission were present, adopted the foregoing rule.

The Secretary is hereby directed to submit the aforesaid rule to the Attorney General and Governor of Indiana, for their approval of same, and thereafter to submit the aforesaid rule to the publisher, Indiana Register.

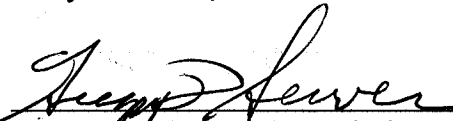
ABSENT

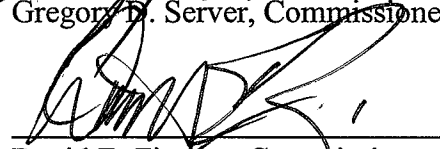
David Lott Hardy, Chairman


Jeffrey L. Golc, Commissioner

ABSENT

Larry S. Landis, Commissioner


Gregory D. Server, Commissioner


David E. Ziegner, Commissioner

ATTEST: APR 23 2008


Brenda A. Howe, Secretary to the Commission

Date:

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Final Rule

LSA Document #07-514(F)

DIGEST

Amends 170 IAC 1-1.1-3, 170 IAC 1-1.1-4, 170 IAC 1-1.1-7 through 170 IAC 1-1.1-10, 170 IAC 1-1.1-12, 170 IAC 1-1.1-15, 170 IAC 1-1.1-16, 170 IAC 1-1.1-18, 170 IAC 1-1.1-21, 170 IAC 1-1.1-23, and 170 IAC 1-1.1-24 concerning practice and procedure before the commission. Effective 30 days after filing with the Publisher.

170 IAC 1-1.1-3

170 IAC 1-1.1-4

170 IAC 1-1.1-7

170 IAC 1-1.1-8

170 IAC 1-1.1-9

170 IAC 1-1.1-10

170 IAC 1-1.1-12

170 IAC 1-1.1-15

170 IAC 1-1.1-16

170 IAC 1-1.1-18

170 IAC 1-1.1-21

170 IAC 1-1.1-23

170 IAC 1-1.1-24

SECTION 1. 170 IAC 1-1.1-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-3 Filings and communications with the commission, copies, and computation of time

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 3. (a) The filing of any communication, paper, or pleading with the commission may be made through the United States mail or in person as follows:

(1) Filings made by mail are considered filed on the date received by the commission. All filings shall be addressed to the secretary of the commission. ~~Indiana Government Center South, Suite E306, 302 W. Washington St., Indianapolis, Indiana 46204.~~

(2) Filings made in person are considered filed on the date received by the commission. Unless authorized by a presiding officer, a filing may not be accepted outside of the regular business hours of the commission on the date due.

(b) A presiding officer at any hearing may permit appropriate pleadings or other papers to be filed with the presiding officer at the hearing.

(c) Unless otherwise provided by this rule, the petitioner or other party shall file with the secretary of the commission an original pleading and ~~eight (8)~~ **four (4)** copies, one (1) of which must be unbound and printed ~~on~~ only on one (1) side of the page, in proceedings assigned only to an administrative law judge. The petitioner or other party shall file with the secretary of the commission an original and ~~thirteen~~

~~(13)~~ **five (5)** copies, one (1) of which must be unbound and printed **on** only ~~on~~ one (1) side of the page, in proceedings assigned to a commissioner and administrative law judge. A presiding officer may require that a different number of copies be filed. Filings other than:

- (1) territorial maps;
- (2) engineering drawings; or
- (3) other visual ~~aides~~ **aids**;

must be made on eight and one-half (8½) **inch** by eleven (11) inch paper unless otherwise authorized by the presiding officer.

(d) All time periods within which to make filings with the commission are given in calendar days unless otherwise stated. In computing any period of time prescribed or allowed by this rule, by order of the commission or the presiding officer, or by any applicable statute that does not contain a provision regarding computation of time, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is a:

- (1) a Saturday;
- (2) a Sunday;
- (3) a legal holiday as defined by state statute; or
- (4) a day that the office in which the act is to be done is closed during regular business hours.

(e) In any event, the period runs until the end of the next day that is not a:

- (1) Saturday; a
- (2) Sunday; a
- (3) legal holiday; or a
- (4) day on which the commission is closed for business.

When the period of time allowed is less than seven (7) days, intermediate Saturdays, Sundays, legal holidays, and days on which the office is closed shall be excluded from the computations.

(f) Remittances to the commission should be made by money order or check payable to the Indiana utility regulatory commission, except that remittances in payment of the statutory fees for the issuance of securities by municipalities shall be:

- (1) by check payable to the "Treasurer of the State of Indiana"; and ~~shall be~~
- (2) delivered to the secretary of the commission.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-3; filed Oct 30, 2000, 2:10 p.m.: 24 IR 654; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670)

SECTION 2. 170 IAC 1-1.1-4 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-4 Confidential or privileged information

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 5-14-3; IC 8-1-1-8; IC 8-1-2-29

Sec. 4. (a) If a party desires to file with or submit to the commission any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that the party believes is confidential in accordance with IC 8-1-2-29 and IC 5-14-3, the party shall apply for a finding by the commission, on or before the date (if any) information is required to be filed, that the information is confidential. The written application for a confidentiality finding must be served on all parties of record. At any time after ten (10) days, or earlier with the consent of the parties or as ordered by the presiding officers, following an application by any party under this subsection, the commission may take any one (1) or more of the

following actions:

- (1) Find information to be confidential, in whole or in part.
- (2) Find information not to be confidential, in whole or in part.
- (3) Issue a protective order or docket entry covering the information.
- (4) Find that information found not to be confidential should be filed in accordance with this rule.
- (b) The application required by subsection (a) shall be accompanied by the sworn statement or

testimony of a party that describes the following:

- (1) The nature of the confidential information.
- (2) The reasons why the information should be treated as confidential information pursuant to under IC 8-1-2-29 and IC 5-14-3.
- (3) The efforts the party has made to maintain the confidentiality of the information.

(c) At the request of the presiding officer or any party, an in camera inspection shall be conducted for the purpose of hearing argument on confidentiality of information submitted under this rule. If an in camera inspection is conducted under this section, the information for which confidential treatment is requested shall be made available during the in camera inspection on a provisional basis for the limited purpose of determining its confidentiality. An in camera inspection conducted under this section may, at the discretion of the presiding officer, be publicly noticed under IC 8-1-1-8.

(d) ~~Subject to the rules of evidence and discovery,~~ **If, during the in camera inspection, the presiding officer determines that the information in question is determined not to be confidential shall be deemed automatically withdrawn or is only partially confidential, the commission shall maintain the confidentiality of the information until:**

- (1) any appeal to the full Commission has been decided; or**
- (2) until such time as the motion to amend or withdraw the information has been finally ruled upon;**

whichever occurs later.

(e) Information filed with or submitted to the commission prior to a finding by the commission that such ~~the~~ information is confidential shall be available to the public pursuant to **under** IC 8-1-2-29.

(f) Parties seeking protective orders to prevent or limit discovery of trade secret or other confidential:

- (1) research;
- (2) development; or
- (3) commercial;

information shall make a separate motion under Trial Rule 26(C).

(g) After **receiving a preliminary determination by the commission that any material is entitled to confidential upon any subsequent filing of such material by a party, the party shall reference the cause number under which the confidentiality treatment, documents submitted shall comply with the specific directives set forth in the determination. was made.** *(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-4; filed Oct 30, 2000, 2:10 p.m.: 24 IR 655; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670)*

SECTION 3. 170 IAC 1-1.1-7 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-7 Attorneys; representation; withdrawal of appearance

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 7. (a) Any person filing an appearance pro se to represent his or her own interest is required to:

- (1) sign and verify any pleadings or documents in accordance with section 8(d) of this rule; and to
- (2) comply with all rules applicable to commission proceedings.

(b) The interest of another person or entity may only be represented by an attorney admitted to practice before the supreme court of Indiana in good standing.

(c) An attorney not admitted to practice before the supreme court of Indiana in good standing but admitted to practice before the Supreme Court of the United States, or the highest court of any other state or territory of the United States, in good standing, may appear at the discretion of the presiding officer before the commission upon filing a verified petition for limited admission to practice before the commission that meets the requirements of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys Rule 3, Section 2(a). Upon being granted limited admission to practice before the commission, an attorney must appear with co-counsel admitted to practice in Indiana. Pending approval of the petition, such an attorney may be permitted to appear, at the discretion of a presiding officer, at any hearing. Local counsel shall:

(1) sign all briefs, papers, and pleadings in such cause; and shall

(2) be jointly responsible therefor.

(d) Any withdrawal of appearance by an attorney on behalf of any party must:

(1) comply with the Indiana Rules of Professional Conduct;

(2) be in writing; and

(3) be granted by leave of the presiding officer.

(e) Except for good cause shown, ~~the presiding officer may not grant~~ a request for withdrawal of appearance by an attorney ~~unless the request has been~~ **must be** filed with the commission at least ten (10) days prior to the next scheduled hearing date. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-7; filed Oct 30, 2000, 2:10 p.m.: 24 IR 656; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670*)

SECTION 4. 170 IAC 1-1.1-8 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-8 Pleadings; general requirements

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 35-44-2-1

Sec. 8. (a) An attorney eligible to practice before the commission shall sign all pleadings filed with the commission or as otherwise required by statute or as follows:

(1) By the person, if an individual.

(2) By a partner, if a partnership.

(3) By a corporate officer or, if officers have not been selected, by an incorporator, if a corporation.

(4) By a duly authorized official, if a municipal corporation.

(5) By a bona fide general officer, if an unincorporated association.

(b) Petitions and complaints may be amended or supplemented upon written or oral motion. Leave to amend a petition or complaint shall be freely granted upon failure of any other party to the proceeding to demonstrate undue prejudice. If the amended or supplemented petition or complaint seeks relief substantially different than that originally prayed for:

(1) the caption of the petition or complaint shall be revised to accurately describe the relief being sought; and

(2) republication or renotification of any previously noticed hearing may be required by the commission.

(c) A party may amend his **or her** pleading once as a matter of course at any time before a

responsive pleading is served, or, if the pleading is one to which no responsive pleading is permitted and the cause has not been set for an evidentiary hearing, he **or she** may so amend it at any time within thirty (30) days after it is served. Otherwise, a party may amend his **or her** pleading only by leave of the presiding officer or by written consent of the adverse party, and leave shall be given when justice so requires. A party shall plead in response to an amended pleading within:

- (1) the time remaining for response to the original pleading; or ~~within~~
- (2) twenty (20) days after service of the amended pleading;

whichever period may be the longer, unless the presiding officer otherwise orders.

(d) The signature of the party, if an individual, or of a duly authorized representative, if the party is an entity, or of the attorney for the party constitutes a certificate that:

- (1) the signatory has read the pleading;
- (2) to the best of the signatory's knowledge, information, and belief, there is a good ground to support the pleading; and
- (3) the pleading is not interposed solely for delay.

If a pleading or other document is not signed as required in this subsection, the pleading may be stricken and the action may proceed as though the pleading had not been served. Except as required by law, pleadings or motions need not be verified. Where a pleading or other document of any kind is required to be verified, or where an oath is required to be taken, it is sufficient if the subscriber simply affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

"I (we) affirm under penalties for perjury that the foregoing representation(s) is (are) true to the best of my (our) knowledge, information, and belief.

Signed _____
Date _____".

(e) An individual who knowingly falsifies an affirmation or representation of fact is subject to the same penalties as prescribed by law for perjury under IC 35-44-2-1.

(f) Every pleading of a party represented by an attorney must:

- (1) be signed by at least one (1) attorney of record; and
- (2) **include** the attorney's:

- (A) address;
- (B) telephone number;
- (C) fax number;
- (D) **electronic mail address;** and
- (E) attorney number. ~~must be stated, except that~~

This subsection does not apply to pleadings and motions made orally and transcribed as a result of a hearing. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-8; filed Oct 30, 2000, 2:10 p.m.: 24 IR 656; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670*)

SECTION 5. 170 IAC 1-1.1-9 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-9 Petitions

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 9. (a) In addition to the matters required by section 8 of this rule, petitions must comply with

the requirements of the statute under which they are filed and must contain the following:

- (1) A caption that describes, in general terms, the relief being sought.
- (2) A plain and concise statement of the facts showing the interest of each of the petitioners in the matters involved in the proceeding.
- (3) A plain and concise statement of the facts that necessitate or justify relief.
- (4) A reference to the statutes under which the commission has jurisdiction and the rules of the commission deemed applicable.
- (5) A statement designating the person in Indiana authorized to accept for the petitioner service of pleadings in the proceeding, including that person's:
 - (A) address;
 - (B) telephone number; and
 - (C) fax number; and
 - (D) electronic mail address.

(6) The name of the respondent as required.

(7) Specific prayers for the relief requested.

(b) In any utility rate proceeding where the petitioner in its petition requests a specific test year and cutoff date, the commission shall, ~~within thirty (30) days following the initiation of such proceeding, in consultation with the parties at the time of the prehearing conference or by agreement of the parties in writing as set forth in section 15 of this rule,~~ by order, fix the test year and cutoff date for purposes of accounting, engineering, and other evidence to be presented in such proceeding, which shall be binding upon all parties. ~~The commission may, on its own motion, by order, fix such test year and cutoff date at any time following the filing of any such petition. The commission, a commissioner, or a presiding officer shall confer with the petitioner and the office of the utility consumer counselor before issuing such an order.~~

(c) In any proceeding in which the petitioner is required by law to publish notice of the filing of the petition, ~~such the~~ petitioner shall, following publication of ~~such the~~ notice, certify to the commission that ~~such the~~ publication has occurred, listing the names of the newspapers and the county or counties in which ~~such the~~ notice was published. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-9; filed Oct 30, 2000, 2:10 p.m.: 24 IR 657; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670*)

SECTION 6. 170 IAC 1-1.1-10 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-10 Complaints and answers

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 10. (a) In addition to the matters required by sections 8 and 9 of this rule, complaints must also state the name of each respondent and each individual or entity, if any, who, under any applicable statute or commission rule, is required to be named in the complaint because of the individual's or entity's interest or possible interest in the subject matter. The complaint must state the address of each respondent, individual, or entity, if known. If ~~such the~~ address is unknown, the complaint must state that each of the parties joining in the complaint has been unable to ascertain the address upon reasonable inquiry.

(b) Concurrently with the filing of any complaint with the commission, the complainant shall serve a copy on each named respondent.

(c) Answers to any complaint must conform to the following:

- (1) Answers to complaints ~~may~~ **must** be filed with the commission ~~Answers to complaints must be filed~~ within twenty (20) days after service of the complaint unless a different time is prescribed by:

- (A) statute;
- (B) the commission; or
- (C) the presiding officer.

(2) All answers must be in writing and be drawn as to advise the parties and the commission fully and completely of the nature of the defense. The respondent shall:

- (A) admit or controvert each material allegation of the complaint; and
- (B) state clearly and concisely the facts and matters of law relied upon.

Any allegation contained in a complaint that is not specifically admitted or controverted by an answer is considered denied by the respondent. If the respondent lacks knowledge or information sufficient to form a belief as to the truth of an allegation, the respondent shall so state and ~~such~~ **the** statement shall be considered a denial. Failure to file an answer within the time allowed under this subsection constitutes a general denial thereto.

(3) In its answer, a respondent may seek relief against other parties in that proceeding by reason of the presence of common questions of law or fact. The respondent shall set forth in the answer the following:

- (A) The facts constituting the grounds for the claim.
- (B) The provisions of the:
 - (i) statutes;
 - (ii) rules;
 - (iii) regulations; or
 - (iv) orders;

relied upon.

- (C) The injury complained of.
- (D) The relief sought.

The answer must, in all other respects, conform to the requirements of this rule for answers generally.

(4) If the respondent desires affirmative relief, the answer shall also contain **the following**:

- (A) A plain and concise statement of the facts ~~which that~~ are deemed to necessitate or justify relief. ~~and~~
- (B) Specific prayers for the relief deemed appropriate.

(5) Unless otherwise permitted by a presiding officer, replies to answers seeking affirmative relief must be filed with the commission:

- (A) not more than ten (10) days after service of the answer; and
- (B) not less than five (5) days prior to the date set for the commencement of the hearing, if any.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-10; filed Oct 30, 2000, 2:10 p.m.: 24 IR 657; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670)

SECTION 7. 170 IAC 1-1.1-12 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-12 Motions

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-3-1

Sec. 12. (a) A motion must state the grounds therefor and the relief sought. Parties may file motions:

(1) to strike any insufficient claim or defense;

(2) to: ~~make~~

(A) **add** additional parties;

(B) strike out improper parties; or

(C) substitute parties;

(3) to dismiss a proceeding for: ~~want~~

(A) **lack** of jurisdiction;

(B) insufficiency of the petition; or ~~order instituting the same or~~

(C) other sufficient cause;

(4) for:

(A) a continuance of a hearing; or

(B) an extension of time for:

(i) filing a pleading; or ~~for~~

(ii) complying with an order; or

(5) for other appropriate relief.

(b) Motions based on a matter ~~which~~ **that** does not appear of record shall be supported by affidavit.

(c) Motions may be accompanied by memoranda in support thereof.

(d) A party may make a motion in writing. Motions made during hearings may be stated orally upon the record. The presiding officer may require that such oral motions be:

(1) reduced to writing; and

(2) filed separately.

(e) Responses to motions made during hearings may be stated orally on the record, or the presiding officer may require that oral responses be:

(1) reduced to writing; and

(2) filed separately.

Any response to a written motion must be filed with the commission within ten (10) days after service of the motion unless the presiding officer prescribes a different time.

(f) The moving party may reply to a response made to the party's motion. A reply to responses made orally during a hearing may be stated orally on the record, or the presiding officer may require that a reply be reduced to writing and filed separately. Any written reply to a response shall be filed with the commission within seven (7) days after service of the written response or after the response is made orally on the record unless the presiding officer prescribes a different time.

(g) A presiding officer is authorized to rule upon any and all motions. No ruling by a presiding officer upon any motion shall be deemed a final ruling of the commission for purposes of IC 8-1-3-1 until the commission:

(1) issues a final order in the cause; or

(2) makes a determination upon an appeal of the presiding officer's ruling ~~pursuant to~~ **under** section 25 of this rule.

(h) Motions not specifically provided for by this rule shall be made in accordance with any Indiana rule of trial procedure applicable, consistent with section 26(a) of this rule. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-12; filed Oct 30, 2000, 2:10 p.m.: 24 IR 659; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670*)

SECTION 8. 170 IAC 1-1.1-15 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-15 Preliminary hearings

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-2-29

Sec. 15. (a) In order to:

- (1) make possible the more effective use of hearing time in formal proceedings on the merits of a petition or a complaint; ~~and to~~
- (2) otherwise expedite the orderly conduct and disposition of those proceedings; and ~~to~~
- (3) serve the public interest;

the commission may require preliminary hearings, which ~~includes~~ **include** prehearing, **technical, and attorney** conferences, among parties to the ~~proceedings~~ **proceeding** prior to the commencement of an evidentiary ~~hearings~~ **hearing** on the merits of the petition or complaint. A ~~preliminary hearing~~ **Prehearing conferences and technical conferences** shall be convened and conducted on the record of the proceeding following proper publication of notice and notice to all parties.

(b) The commission, or the presiding officer, with or without motion, and after consideration of the probability of beneficial results to be derived therefrom, may direct:

- (1) that a preliminary hearing be held; and ~~direct~~
- (2) the parties to the proceeding to appear to consider any or all of the matters enumerated in subsection (c).

When a petitioner requests in its petition that a date be promptly fixed for a ~~preliminary hearing~~ **prehearing conference** in the proceeding, the ~~preliminary hearing~~ **prehearing conference** shall be held within forty-five (45) days following the date of filing of the petition.

(c) The ~~presiding officer may consider, among other things, the following should be considered at the preliminary hearing:~~ **a prehearing conference:**

- (1) The possibilities for settlement of the proceeding, subject to the approval of the commission.
 - (2) Whether the proceeding is one appropriate for alternative dispute resolution.
 - (3) The estimated amount of hearing time that will be required to dispose of the proceeding and the establishment of a schedule of evidentiary or other hearing dates.
 - (4) Arrangements for the submission of written direct testimony of witnesses and exhibits in advance of evidentiary hearing.
 - (5) Any other matters as may aid in expediting the orderly conduct and disposition of the proceeding, including the following:
 - (A) Simplification of the issues.
 - (B) Obtaining admissions as to, or stipulations of, facts not remaining in dispute, or obtaining stipulations as to the authenticity of documents that might properly shorten the evidentiary hearing.
 - (C) The limitation of the number of witnesses.
 - (D) Discovery or production of data or other material, and coordination of discovery and a discovery cutoff date.
- (d) Representatives of all parties shall:
- (1) attend the ~~preliminary hearing~~ **prehearing conference** unless excused by the presiding officer; ~~They should~~
 - (2) be fully prepared to discuss all matters involved in the proceeding, both procedural and substantive **matters involved in the proceeding;** and

(3) be fully authorized to make commitments with respect to those matters.

In the absence of agreement among parties with respect to procedure and related issues, the parties, unless appearing pro se, should be prepared to have an attorney present in order to introduce evidence necessary to assist the presiding officer to make factual determinations required to order proper disposition of preliminary matters.

(e) If the parties have previously reached agreement on any or all procedural matters to be considered at a prehearing conference, the agreement may be reduced to writing and filed for approval in lieu of the prehearing conference.

~~(e)~~ **(f)** Failure of a party to attend a preliminary hearing, after being served with due notice of the time and place thereof, shall constitute waiver of all objections to any agreements reached by the parties in attendance at the preliminary hearing or to the disposition of any issues on which evidence was taken at the preliminary hearing as reflected in any order or ruling made at the preliminary hearing or issued as a result of the preliminary hearing. If a party is excused from attendance at the preliminary hearing, **prehearing conference**, the determination of whether a waiver of all objections to such agreements or the disposition issues still applies is at the discretion of the presiding officer.

~~(f)~~ If the parties have previously reached agreement on any or all procedural matters to be considered at a preliminary hearing, the agreement may be reduced to writing and filed for approval in lieu of the preliminary hearing. Commission approval of such an agreement may not be in lieu of a preliminary hearing if a petition to intervene is filed at least five (5) days prior to the date originally set for the preliminary hearing.

~~(g)~~ The presiding officer at any such preliminary hearing may dispose of any procedural matters during the course of the proceeding.

~~(h)~~ **(g)** The presiding officer is authorized, but not limited to, the following actions at the preliminary hearing: **attorney and technical conferences:**

(1) Participate Participating in the technical and legal discussions.

(2) Arrange Arranging for recording stipulations or agreements made at a preliminary hearing: by the parties to the proceeding.

(3) Fix the date or dates for evidentiary or other hearings on the merits that may be required to dispose of the proceeding.

(3) Discussing procedural matters and issues that may be addressed at prehearing conferences.

(4) Otherwise assist assisting the parties in their effort to reach an agreement that will:

(A) expedite the proceeding; and

(B) serve the public interest.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-15; filed Oct 30, 2000, 2:10 p.m.: 24 IR 660; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670)

SECTION 9. 170 IAC 1-1.1-16 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-16 Discovery

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1; IC 8-1-2-29

Sec. 16. (a) Parties shall be entitled to all the discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure as from time to time amended by the Indiana supreme court or general assembly.

(b) Any ~~petitioner, applicant, complainant, respondent, or intervenor~~ party may issue a written request in writing, for discovery from to any other party. Unless otherwise directed by the presiding officer, if the party against whom the discovery is directed does not satisfy such the request within ten (10) calendar days following receipt thereof or reach an agreement with the requesting party as to the nature, scope, and time for the requested discovery, the party seeking discovery may make written application to the commission for an order compelling discovery, specifically setting forth and detailing the:

- (1) discovery sought; and the
- (2) reasons why it is thought to be relevant to the issues; and
- (3) reasonable efforts taken to reach agreement.

The ~~commission~~ presiding officers shall thereupon grant, grant in part, or deny the application and shall promptly advise the parties of its determination. Where such application is granted, in whole or in part, the party against whom discovery is sought shall allow discovery as specified in the ~~commission's order~~. by the presiding officers. No continuance of a scheduled hearing shall be granted for inability to complete discovery unless the parties have complied with the foregoing provisions.

(c) No discovery shall be ordered with regard to rulemaking proceedings. The commission may, however, in the exercise of its authority, obtain information relating to the subject matter of the proposed rules from any entity under its jurisdiction. Such information shall be available to the public under IC 8-1-2-29.

(d) In order to serve the public interest and expedite the discovery process, the presiding officer, with or without motion, may call one (1) or more informal attorneys' conferences for the purpose of discussing, hearing argument on, and resolving discovery disputes, including discovery issues and discovery schedules. The presiding officer may:

- (1) participate in the discussions; and
- (2) assist the parties in resolving discovery disputes.

The presiding officer shall reduce to writing in the form of a docket entry any rulings made at the attorneys' conference.

(e) ~~Upon a showing of good cause by the party seeking~~ Parties may request a protective order pursuant to the requirements set forth in Indiana Trial Rule 26(C) and, as appropriate, section 4 of this rule. Upon such a request, the presiding officer may grant appropriate protective relief, ~~Such appropriate relief which may include the convening of an informal, off the record attorneys' conference to be conducted off the record of the proceedings for in order to conduct~~ an in camera review of the material sought in discovery. Requests for protective orders shall be governed by Rule 26(C) of the Indiana Rules of Trial Procedure. *(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-16; filed Oct 30, 2000, 2:10 p.m.: 24 IR 661; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670)*

SECTION 10. 170 IAC 1-1.1-18 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-18 Hearing procedure

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 18. (a) Hearings must be conducted by a commissioner or administrative law judge.

(b) The presiding officer may make rulings with respect to pleadings and other matters not ruled upon.

(c) The presiding officer conducting the hearing must enter upon the record all appearances, with a notation in whose behalf each appearance is made.

(d) In hearings upon complaints or petitions, the complainant, petitioner, or other party having the burden of proof must open and close the presentation of evidence and arguments. In hearings on investigations and in proceedings that have been consolidated for hearing, the presiding officer may direct who shall open and close the record. In proceedings where the evidence is particularly within the knowledge or control of another party, the presiding officer may vary the order of presentation. The presiding officer may, at any time during the hearing, limit repetitive or redundant:

- (1) testimony;
- (2) cross-examination;
- (3) motions; or
- (4) objections.

If the commission initiated the proceeding, the proceeding may be opened by presentation of a report prepared at the direction of the commission under IC 8-1-1-5.

(e) When objections to the admission or exclusion of evidence before the commission or the presiding officer are made, the objecting party must briefly state all the grounds relied upon.

(f) The presiding officer may, at his **or her** discretion, permit a party to furnish designated exhibits after the close of the hearing with copies to all parties of record. The presiding officer must specifically describe and assign an identifying exhibit number at the time of hearing and may admit it into the record of the proceeding with physical production at a later time, provided a party does not object, or if a party objects, the presiding officer shall direct the mode of admissibility, including granting the objecting party reasonable opportunity to question the sponsor of the exhibit regarding its contents. However, this subsection does not make evidence admissible that would otherwise be inadmissible.

(g) The direct testimony of a witness for any party may be presented in written question and answer form and must have any related exhibits attached unless the presiding officer prescribes another format. In any utility rate proceeding, unless otherwise provided in any prehearing conference order or by stipulation of the parties, such prepared testimony and exhibits shall be filed with the commission and served on all parties at least fifteen (15) days prior to the date of the hearing at which the same is to be offered into evidence. This requirement shall not apply to matters provided for in section ~~21(f)~~ ~~(h)~~ 21(f) of this rule. Unless otherwise provided by the presiding officer, any prepared testimony and exhibits must be filed with the commission secretary in accordance with section 3 of this rule and served on all parties to the proceeding within the deadline established by the preliminary hearing order or docket entry of the presiding officer. However, nothing in this section requires the prefiling of any testimony without the specific order of a presiding officer or the commission.

(h) Unless otherwise directed by the commission, prefiled testimony, when properly authenticated by the witness under oath or affirmation, may be offered as an exhibit. The written testimony shall be subject to the same rules of admissibility and cross-examination of the sponsoring witness as if the testimony were being presented orally.

(i) Any party to a proceeding may move in writing for an extension of time in which to prefile testimony. The motion should be filed prior to the time set for the filing of the testimony unless a supporting affidavit establishes that the facts, which are the basis of the motion, did not then exist or were not then known to the moving party. For good cause shown, the presiding officer may reschedule a hearing to a later date, if necessary, and fix the extension of time in which to prefile such testimony in order to avoid undue delay and provide reasonable opportunity for all parties to properly prepare their cases. All parties shall be given an opportunity to object to any motion for extension of time.

(j) With the approval of the presiding officer, corrections or changes in the stenographic record may be made upon the written agreement of all parties of record filed with the commission within ten (10) days after parties have been notified that the stenographic record has been completely transcribed. Other

corrections or changes may be made only upon order of the commission.

(k) Parties may obtain copies of the stenographic record from the official reporter upon payment of the appropriate charges fixed by the commission.

(l) Due legal notice of the initial evidentiary hearing on the merits, having been given and published as required by law, notice of further hearings or other matters agreed upon or ordered by the presiding officer at the hearing do not need to be published. It is the obligation of counsel and parties to a formally docketed cause to keep themselves informed of all actions taken in a proceeding before the commission.

(m) After being duly notified, a party who fails to be represented at a scheduled conference or hearing in any proceeding is deemed to have waived the opportunity to participate in ~~such~~ the conference or hearing, and is deemed to have consented to, and may not be permitted thereafter to reopen, any matter resolved or accomplished at such conference or hearing, and may not be permitted to recall for further examination witnesses who were excused unless the presiding officer determines that the failure to be represented was unavoidable or that the interests of the other parties and of the public would not be unduly prejudiced by permitting such reopening for further examination. If any witness is recalled for further examination, then the recalling party must pay any expert fees, costs, and expenses. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-18; filed Oct 30, 2000, 2:10 p.m.: 24 IR 662; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670*)

SECTION 11. 170 IAC 1-1.1-21 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-21 Evidence and administrative notice

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 21. (a) The presiding officer has all necessary authority to control the receipt and admissibility of evidence, including, but not limited to, the following:

(1) Ruling on the:

(A) admissibility of evidence; or

(2) ~~Ruling on the~~ (B) qualifications of witnesses;

or both.

~~(3)~~ (2) Confining the evidence to the issues in the proceeding and imposing, where appropriate, the following:

(A) Limitations on the number of witnesses to be heard.

(B) Limitations of time and scope for direct and cross-examinations.

(C) Limitations on the presentation of further cumulative or repetitious evidence.

(D) Any other necessary limitations.

(4) (3) Taking other appropriate action necessary for the expeditious conduct of the hearing. The presiding officer shall actively employ these powers to direct and focus the proceedings consistent with due process.

(b) Except as otherwise provided in this rule, when writings, recordings, or photographs are offered in evidence, copies shall be furnished to the presiding officer and to the parties present at the hearing unless the presiding officer otherwise directs. The presiding officer may require a party to furnish additional copies of exhibits.

(c) Verified petitions, complaints, and answers thereto, and similar verified documents upon which hearings are held, may, without further action, be admitted into evidence:

(1) by agreement of all parties; or

(2) provided the affiant is made available for cross-examination.

(d) A party may move for the admission of evidence into the record upon presentation of the sponsoring witness, after authentication, or pursuant to stipulation or agreement.

(e) An offer to prove may be requested when a ruling has been made holding that the witness was not competent to testify or that the evidence to be offered was inadmissible. An offer to prove may also be made when the presiding officer has sustained an objection to the admission of tangible evidence. If the proffered evidence is tangible, the commission shall mark it for identification purposes and that constitutes the offer to prove. If the proffered evidence is oral testimony, the offer to prove must consist of a summary of the evidence that the counsel contends would be adduced by such testimony. The presiding officer may, when requested, permit an offer to prove to be made orally or by the written prefiled testimony of a witness. The presiding officer may also request a statement of the basis for admissibility of such evidence.

~~(f) When a party desires to offer in evidence any portion of the testimony in another commission proceeding, such portion shall be plainly designated in the stenographic record, and, if admitted, shall be deemed read in evidence as a part of the testimony in the pending proceeding.~~

~~(g)~~ (f) When a party desires to offer in evidence any official publication of the commission, any order of the commission in another proceeding, any exhibit introduced in evidence in another commission proceeding, or any other document in the commission's official files, or any part thereof, it shall be:

(1) plainly designated in the stenographic record and an exhibit number assigned thereto; and

(2) if admitted, ~~it shall be deemed introduced read in evidence without physical production and marking for identification.~~ **as part of the testimony in the pending proceeding.**

~~(h) With the approval of the presiding officer, verified pleadings or affidavits may be received in evidence as proof of the matters contained therein, provided the affiant or affiants are made available for cross-examination.~~

~~(i)~~ (g) The commission shall take administrative notice of any fact that must be judicially noticed by a court of Indiana.

~~(j)~~ (h) The commission may take administrative notice, **on its own motion or upon a party's motion**, of relevant administrative rules, commission orders, or other documents previously filed with the commission.

~~(k) The commission may take administrative notice on its own motion or upon a party's motion.~~

~~(l)~~ (i) In order for the commission to take administrative notice of a fact or other material, the parties must be:

(1) notified before or during the hearing of the specific facts or material noticed, and the source of the facts or material noticed, including any memoranda or data of the commission staff related thereto;

(2) provided a copy of any document noticed; and

(3) afforded an opportunity, upon timely request, to be heard as to the propriety of taking judicial **administrative** notice and the tenor of the matter notice. In the absence of prior notification, the request may be made after ~~judicial~~ **administrative** notice has been taken.

~~(m)~~ (j) A request by a party for administrative notice of a factual matter that should be included in a party's prefiled testimony shall be made at the same time the related evidence is prefiled.

~~(n)~~ ~~An~~ (k) Any documents administratively noticed by the commission shall become part of the record for the proceeding. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-21; filed Oct 30, 2000, 2:10 p.m.: 24 IR 663; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670*)

SECTION 12. 170 IAC 1-1.1-23 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-23 Briefs and oral arguments; posthearing briefs and proposed orders

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 23. (a) Briefs and proposed orders are to be filed and oral arguments heard only at the request of or approval by the commission or the presiding officer and at the times fixed therefor.

(b) An original and four (4) copies of all briefs shall be filed with the commission and a copy served by the submitting party upon all other parties to the proceeding, such service and proof thereof to be in accordance with section 13 of this rule. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-23; filed Oct 30, 2000, 2:10 p.m.: 24 IR 665; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670*)

SECTION 13. 170 IAC 1-1.1-24 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-24 Dismissal of cases

Authority: IC 8-1-1-3; IC 8-1-2-47

Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 24. (a) The commission may, in its discretion, dismiss any proceeding that has been pending upon the commission docket: ~~for six (6) months~~

(1) that is not currently set for hearing; and

(2) upon which action has not been taken by any party **for a period of sixty (60) days.**

(b) Prior to such dismissal, the commission shall notify all parties to the proceeding by United States mail of its intention to dismiss. Notice shall be served at least ten (10) days prior to the entry of dismissal. (*Indiana Utility Regulatory Commission; 170 IAC 1-1.1-24; filed Oct 30, 2000, 2:10 p.m.: 24 IR 665; readopted filed Apr 6, 2006, 11:00 a.m.: 29 IR 2670*)